

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA,

3:16-cr-00051-BR

Plaintiff,

ORDER REGARDING  
SEPTEMBER 6, 2016,  
HEARING

v.

AMMON BUNDY, RYAN BUNDY,  
SHAWNA COX, PETER SANTILLI,  
DAVID LEE FRY, JEFF WAYNE  
BANTA, KENNETH MEDENBACH, and  
NEIL WAMPLER,

Defendants.

BROWN, Judge.

This matter comes before the Court on the matters the Court took up with the parties at a hearing on September 6, 2016. Following that hearing, the Court issues the following Order:

**DEFENDANT RYAN BUNDY'S MOTIONS FILED SEPTEMBER 2, 2016**

**I. Defendant Ryan Bundy's Motion (#1180) to Dismiss Based on Entrapment**

The Court **DENIES** Defendant Ryan Bundy's Motion (#1180) to Dismiss Based on Entrapment.

Although entrapment is a defense on which the jury may be

instructed in the event evidence is introduced pertaining to that defense, it is not a basis for pretrial dismissal of an indictment. If trial evidence makes it appropriate to do so, the Court will include a jury instruction on entrapment in the Final Jury Instructions.

## **II. Defendant Ryan Bundy's Motion (#1181) for Disqualification of Counsel**

In his Motion Bundy asserts he desires to disqualify standby counsel on the basis that (1) he did not have an opportunity to interview standby counsel and to review her qualifications; (2) standby counsel has a conflict of interest because she is a public defender paid by the government; and (3) Defendant believes standby counsel is not competent to represent him, standby counsel has not sufficiently assisted Bundy in communicating with individuals who he would like to consult regarding his defense, and, in any event, standby counsel has differences of opinion with Bundy regarding defense strategy.

Because Ryan Bundy is an indigent, *pro se* Defendant with court-appointed standby counsel, he "does not have the right to the counsel of his choice; that is, 'to have a specific lawyer appointed by the court and paid for by the public.'" *United States v. Brown*, 785 F.3d 1337, 1343 (9th Cir. 2015)(quoting *United States v. Rivera-Corona*, 618 F.3d 976, 979 (9th Cir. 2010)). Ryan Bundy, therefore, does not have any right to

interview, to review the qualifications of, or otherwise to select the court-appointed standby counsel of his choice. *Id.*

Moreover, because Ryan Bundy is proceeding *pro se*, the fact that he may have philosophical differences with standby counsel or that he finds standby counsel's services unsatisfactory do not establish a basis to disqualify standby counsel.

Ultimately, Ryan Bundy is in complete control over his own trial preparation and practice because he is proceeding *pro se*. The only purposes that standby counsel serves is to facilitate communication with counsel for the government and/or co-defendants, to assist Ryan Bundy in the event that he directs her to do so, and to be prepared to take over Ryan Bundy's defense in the event that he loses his right to proceed *pro se* and/or if he must be removed from the courtroom. In addition, subject to the ordinary restrictions of confinement and this Court's Protective Order (#342), Ryan Bundy is free to communicate with whomever he wishes regarding his defense.

Finally, the Court notes Ryan Bundy's Motion was filed on September 2, 2016, which was the Friday before a holiday weekend that preceded trial. Considering the complexity of this case and the extraordinary volume of discovery, there is not any realistic chance that replacement standby counsel could be prepared to

proceed to trial without a continuance.<sup>1</sup>

Accordingly, the Court **DENIES** Defendant Ryan Bundy's Motion (#1181) for Disqualification of Counsel in which Bundy seeks to disqualify his standby counsel.

### **III. Defendant Ryan Bundy's "Petition to Dismiss with Prejudice for Fourth Amendment Violations"**

The Court **DENIES** Defendant Ryan Bundy's Motion (#1182) entitled "Petition to Dismiss with Prejudice for Fourth Amendment Violations." In that Motion Ryan Bundy contends the Superseding Indictment (#282) is defective because it was not filed with a complaint, "probable cause affidavit," or "oath or affirmation." The Superseding Indictment, however, was issued by a grand jury that rendered a finding of probable cause. See Fed. R. Crim. P. 6, 7.

### **IV. Defendant Ryan Bundy's Motion (#1183) for Extension of Time to File Pretrial Motions**

The Court **DENIES** Defendant Ryan Bundy's Motion (#1183) for Extension of Time to File Pretrial Motions to the extent that he seeks a continuance of the trial date. The Court will address motions made during trial, although such motions may be subject to denial in appropriate circumstances on the basis that they are

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<sup>1</sup> For the reasons stated in the Court's Order (#850) Denying Motions to Continue Trial Date, the Court finds a continuance of this matter would severely prejudice the parties and the administration of justice both in these proceedings and in the ongoing proceedings in the District of Nevada.

untimely.

**V. Defendant Ryan Bundy's Motion (#1184) to Compel Rule Book**

The Court **GRANTS** Defendant Ryan Bundy's Motion (#1184) to Compel Rule Book in which Ryan Bundy moves the Court to provide him with a copy of the Federal Rules of Criminal Procedure. During the September 6, 2016, hearing the Court provided Ryan Bundy with a copy of the Federal Rules of Criminal Procedure for his use.

**VI. Defendant Ryan Bundy's Motion (#1185) for Production of Evidence Favorable to the Defendant**

The Court **DENIES** Defendant Ryan Bundy's Motion (#1185) for Production of Evidence Favorable to the Defendant. At the September 6, 2016, hearing, the government again represented it has complied with its discovery obligations as it has certified at numerous stages of these proceedings. Ryan Bundy has not identified any particular evidence that the government has not provided. On this record, therefore, there is not any ripe issue before the Court regarding the government's discovery obligations.

**BRIEFING DEADLINES**

Unless otherwise directed by the Court, when a party files a motion during this trial, the party or parties opposing the motion may file a response within two court days after the motion

is filed (e.g., the response to a motion filed on a Monday is due no later than 5:00 p.m. on the following Wednesday). If the party or parties opposing the motion file a response, the movant may file a reply memorandum within two court days after the response is filed. Unless otherwise indicated by the Court, all such motions will be taken under advisement on the pleadings.

**I. Motions Filed on September 6, 2016, by Defendant Shawna Cox**

The government may file responses to Defendant Shawna Cox's Motions (#1188) for Order for Production of Evidence Favorable to the Accused, Motion (#1189) for Order to Dismiss Based on Entrapment, Motion (#1191) to Suppress, Motion (#1192) for Extension of Time, and Motion (#1196) to Dismiss for Lack of Subject Matter Jurisdiction **no later than 5:00 p.m., September 8, 2016**. If the government files a response to any such Motion, Cox may file a reply memorandum related to that Motion **no later than 5:00 p.m., September 12, 2016**.

**II. Briefing on Preliminary Jury Instructions**

The Court directs the government to file a memorandum (to include supporting authorities) regarding whether the deprivation and/or conversion of property as relevant to Counts Four and Five of the Superseding Indictment must be permanent and a proposed jury instruction corresponding thereto **no later than Noon, September 9, 2016**.

The Court directs the government to file a memorandum

together with the necessary factual showing as to its request for judicial notice regarding federal ownership of the Malheur National Wildlife Refuge **no later than Noon, September 9, 2016**. Defendants may file **a single response no later than Noon, September 13, 2016**. The government may file an optional reply memorandum **no later than 5:00 p.m., September 14, 2016**.

### **III. Parties' Proposals Regarding Final Jury Instructions**

The Court intends to use the Preliminary Jury Instructions as the foundation for the Final Jury Instructions to be given to the jury in this case. To the extent that any party requests changes or additions to the Preliminary Jury Instructions for purposes of Final Jury Instructions, those proposed changes must be filed **no later than Noon, September 30, 2016**.

IT IS SO ORDERED.

DATED this 7th day of September, 2016.

/s/ Anna J. Brown

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ANNA J. BROWN  
United States District Judge